doctrine of the Kentucky court, which puts a premium on carelessness and inefficiency. However sound the policy of immunity for the county, it is submitted that the reasons therefor do not require that our highways be filled with a large class of civilly irresponsible individuals.

THE CONSTITUTIONALITY OF A STATUTE DISPENSING WITH INDICTMENT ON PLEA OF GUILTY. — The problem of the prisoner who wishes to plead guilty and have his sentence begin at once, but who must wait several months for the required indictment by grand jury, has been met in Pennsylvania by a recent case sustaining a statute which allows the criminal to enter a plea of guilty and receive sentence without indictment. *Commonwealth ex rel. Stanton* v. *Francies*, 95 Atl. 527 (Pa.). The state constitution provides that "no person shall, for any indictable offense, be proceeded against criminally by information." The court considered that "information," as used in the constitution, adopted in 1790, referred to the peculiarly objectionable proceedings, used at one time in England, whereby one might be bound over for trial without any preliminary hearing, at the arbitrary whim of the prosecutor.[1] Consequently the statutory proceeding in Pennsylvania, providing a hearing of both sides and committal by a magistrate, was held not to fall within the constitutional prohibition. Although this construction is a reasonable one,[2] it is not altogether free from doubt in view of the frequent interpretation of the term "information" as referring simply to prosecution without indictment by grand jury.[3]

Apart from a question of constitutional construction, the case is supportable on another ground. The analogous constitutional provision of trial by jury has generally been treated as a privilege of the defendant's, and subject to waiver by him, where there is a statute permitting waiver, and conferring jurisdiction upon the court to try the issue.[4] This seems to be true even when the provision of the constitution is

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[1] The information had many oppressive features. The frequent use of it for libel increased its unpopularity. An information could not be quashed on motion without trial. The penalty was often divided with the informer. See 3 BACON, ABR., 6 ed., 635; 14 VINER'S ABR., 2 ed., 406, 414.

[2] See 7 DANE'S ABR., 282, § 5.

[3] "An information is defined to be a declaration or statement without being made on the oath of the grand jury, whereby a person is charged with the breach of some public law." State *v.* Ledford, 3 Mo. 75, 77. See People *v.* Sponsler, 1 Dak. 289, 298, 46 N. W. 459, 462; Clepper *v.* State, 4 Tex. 242, 246. The term has been so defined in a Pennsylvania case. See *Respublica v.* Wray, 3 Dallas 490; EDWARDS, GRAND JURY, 34. It is interesting to compare with the argument of the court in the principal case that the constitution forbids the old English practice, the conclusion of the Missouri court that the same constitutional provision merely adopts the common-law use of the information in England, so that only felonies require indictment, and even serious misdemeanors may be prosecuted by information, if the legislature chooses to take them out of the class of indictable offenses. State *v.* Ledford, 3 Mo. 75; State *v.* Cowan, 29 Mo. 330; State *v.* Ebert, 40 Mo. 186.

[4] State *v.* Worden, 46 Conn. 349; *Re* Staff, 63 Wis. 285, 23 N. W. 587. Some courts do not require the statute. State *v.* Stevens, 84 N. J. L. 561, 87 Atl. 118. See 21 HARV. L. REV. 212. A constitutional provision requiring trial in the county of the crime may also be waived. State *v.* Albee, 61 N. H. 423.

apparently mandatory in terms,[5] although some courts have found the case easier when their constitution said, "the right to trial by jury shall remain inviolate." [6] If trial by jury may thus be waived, it would seem, *a fortiori*, that a defendant could waive the one-sided grand jury proceeding, which is not final anyway, for the prosecutor may *nol. pros.* a true bill or hold the case over for another grand jury if the bill is ignored.[7] This result has been reached in a few cases.[8] A plea of guilty, by the better view, is strictly not a waiver of trial by jury, for the jury function does not arise unless there is an issue to be tried.[9] In like manner a grand jury proceeding is a mere formality where there is no question of the defendant's guilt. The finding of a true bill by grand jury, as a prerequisite to the court's jurisdiction, is a procedural difficulty which is surmounted by the Pennsylvania statute, allowing the accused to plead guilty to a formal accusation drawn up by the prosecutor. It may be noted in passing, however, that a commission of judges in New York, though recognizing the desirability of dispensing with indictment on plea of guilty, considered it impossible without an amendment to the constitutional provision that "no person shall be held to answer for a capital or otherwise infamous crime except on presentment or indictment by grand jury." [10]

The principal case is in harmony with the tendency, legislative and judicial, to diminish the importance of the grand jury, so that it is now a disappearing institution. In the United States, indictment by grand jury no longer exists as a privilege of the criminal defendant in at least twenty-four states,[11] prosecutions being begun either by indictment or by information.[12] In most of these a grand jury may be called by the district or circuit judge in his discretion, to investigate and present the names in such a case as general corruption. There must generally be a preliminary hearing of both sides by a trained magistrate, thus protecting the innocent from the danger of being held unwarrantably for trial, with more efficiency than under the cumbrous and irresponsible grand jury system.[13] The defendant's historical rights are amply preserved in the trial by jury, the public character of which makes the prosecutor and witnesses strictly accountable. A few of these states still require indictment in capital cases. At present there is a widespread attack on

[5] Belt *v.* United States, 4 D. C. App. 25; Moore *v.* State, 22 Tex. App. 117, 2 S. W. 634; State *v.* Cottrill, 31 W. Va. 162, 6 S. E. 428 (statute upheld by divided court); State *v.* Griggs, 34 W. Va. 78, 11 S. E. 740, following result in previous case.

[6] Brewster *v.* People, 183 Ill. 143, 55 N. E. 640.

[7] United States *v.* Martin, 50 Fed. 918.

[8] Edwards *v.* State, 45 N. J. L. 419; Lavery *v.* Commonwealth, 101 Pa. St. 560. See McGinnis *v.* State, 9 Humphreys (Tenn.) 43.

[9] West *v.* Gammon, 98 Fed. 426; Hollibaugh *v.* Hehn, 13 Wyo. 269, 79 Pac. 1044.

[10] See 4 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, 914–17.

[11] No question of due process under the federal Constitution is involved. A state may do away with the grand jury as far as it sees fit. Hurtado *v.* California, 110 U. S. 516.

[12] See 3 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, 566, naming Arizona, California, Colorado, Connecticut, Florida, Idaho, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, North Dakota, Oklahoma, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. The constitutions of several other states give the legislature power to abolish the grand jury. Oregon has changed back to indictment.

[13] See 7 HARV. L. REV. 189, 190–92; 8 *ibid.* 424.

the grand jury system where still required,[14] but its antiquity promises it life for another generation.

REGULATION OF ATTORNEYS' FEES FOR THE PROSECUTION OF CLAIMS AGAINST THE UNITED STATES. — It is, of course, within the power of Congress to regulate the payment of claims against the United States and to fix the conditions upon which such payments may be made. Thus, Congress may forbid the assignment of a claim against the government,[1] or any agreement to give a lien thereon.[2] Moreover, statutes fixing the compensation of the attorneys employed by the claimant, and making criminal the receipt of a greater amount, have been held within the legislative power.[3] But a recent case shows that there are certain constitutional restrictions on this power. An attorney acting under a contract for a 33⅓ per cent contingent fee secured a judgment for his client in the Court of Claims, on account of property taken during the Civil War. Congress thereupon passed a special appropriation act, limiting the attorney's fee to 20 per cent. It was held that the attorney could recover his full fee from his client, the restriction being unconstitutional. *Moyers* v. *Fahey*, 43 Wash. L. Rep. 691.[4]

It is clear that the attorney's contract is not void as the assignment of a claim against the United States,[5] since even an agreement to pay a certain percentage out of the amount recovered is not an assignment *pro tanto*,[6] unless the attorney is expressly given a lien.[7] Nor by the weight of authority is a contract for a contingent fee objectionable.[8] Since, then, the contract was valid and binding when made, it is protected under the due process clause from arbitrary impairment.[9] It is true that the Supreme Court, in *Ball* v. *Halsell*,[10] held that a statute

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[14] See REPORT OF ROYAL COMMISSION ON DELAY IN THE KING'S BENCH DIVISION, presented to Parliament February 10, 1914, recommending the abolition of the grand jury in England. Also similar recommendations by Mr. Taft to the New York Constitutional Convention, 1 VA. L. REG. (n. s.) 226.

[1] Spofford *v.* Kirk, 97 U. S. 484. See Hager *v.* Swayne, 149 U. S. 242, 247; Ball *v.* Halsell, 161 U. S. 72.

[2] See Nutt *v.* Knut, 200 U. S. 12, 20.

[3] United States *v.* Fairchilds, Fed. Cas. No. 15,067, 1 Abb. 74; United States *v.* Marks, Fed. Cas. No. 15,721, 2 Abb. 531; United States *v.* Van Leuven, 62 Fed. 52 (pensions); Ball *v.* Halsell, 161 U. S. 72 (Indian depredations).

[4] See RECENT CASES, this issue, p. 331.

[5] Assignments of claims against the United States before the issuance of the warrant are void. U. S. COMP. STAT. 1913, § 6383.

[6] Trist *v.* Child, 21 Wall. (U. S.) 441; Wright *v.* Tebbetts, 91 U. S. 252; Roberts *v.* Consaul, 24 A. C. (D. C.) 551; Wassell *v.* Armstrong, 35 Ark. 247. *Contra*, Jones *v.* Blacklidge, 9 Kan. 562.

[7] Nutt *v.* Knut, 200 U. S. 12. *Contra*, see Jones *v.* Rutherford, 26 A. C. (D. C.) 114, 120.

[8] Wylie *v.* Coxe, 15 How. (U. S.) 415; Taylor *v.* Bemiss, 110 U. S. 42; Bergen *v.* Frisbie, 125 Cal. 168, 57 Pac. 784; Matter of Hynes, 105 N. Y. 560, 12 N. E. 60. *Contra*, Ackert *v.* Barker, 131 Mass. 436.

[9] "A vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference." COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 517.

[10] 161 U. S. 72. The right to recover for Indian depredations is based on treaties with the Indians, by which it was agreed that the United States should indemnify those